



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RQ-3

June 9, 1994

Jane Perkins, Treasurer
Democrats 2000
1311 L Street, NW, Suite 300
Washington, DC 20005

Identification Number: C00230342

Reference: 30 Day Post-Runoff (1/1/93-5/24/93), Mid-Year
(1/1/93-6/30/93) and Year End (7/1/93-12/31/93)
Reports

Dear Ms. Perkins:

This letter is to inform you that as of June 8, 1994, the Commission has not received your response to our requests for additional information, dated May 18, 1994. Those notices requested information essential to full public disclosure of your federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). Copies of our original requests are enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Jennifer K. Wall on our toll-free number (800) 424-9530 or our local number (202) 219-3580.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosures



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

RQ-2

Jane Perkins, Treasurer
Democrats 2000
1311 L St., NW, Suite 300
Washington, DC 20005

MAY 18 1994

Identification Number: C00230342

Reference: 30 Day Post-Special Report (1/1/93-5/24/93)

Dear Ms. Perkins:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On Schedule H3 supporting Line 18 of the Detailed Summary Page you disclosed a transfer of \$20,375.34 on 4/28/93 from your non-federal account to your federal account per Advisory Opinion 1993-3. Subsequently, your committee filed an amended Summary and Detailed Summary Page to the 30 Day Post-Special Report to reflect the increased cash on hand balance. Our records indicate that in 1993 your committee filed amended Summary and Detailed Summary Pages, H2's, H3's and H4's to the 1992 Quarterly & Monthly reports which adjusted for the activity described in Advisory Opinion 1993-3. Therefore, this transfer inflates your current cash on hand balance by \$20,375.34.

On 4/2/93 the Commission ruled in Advisory Opinion 1993-3 (copy attached) on behalf of Democrats 2000 that "(t)he Committee should file with its Mid-Year 1993 report amended H2's and H4's listing each covered expenditure and the revised calculations. See Advisory Opinion 1991-15. If any allocable expenditures have been reported solely as expenditures itemized on Schedule B, the Committee should file Schedule H2's, H3's and H4's for these expenditures, also at the time it files its Mid-Year 1993 report. See Advisory Opinion 1992-27. The Committee should include in its report an explanatory letter noting the reason for the new allocations and resulting transfers."

"An entry for the adjustment should be made on Schedule H3 when the transfer is actually made. Democrats 2000 should note that this adjustment reflects retroactive reallocations during the period January 1, 1991, through May 31, 1992, made pursuant to Advisory Opinion 1993-3."

In order to be in total compliance with Advisory Opinion 1993-3, the Commission recommends that you amend your 1991-1992 Quarterly and Monthly Reports for the time period 1/1/91-5/31/92 back to their original filing. The corrected H2's and H4's should be filed as amendments to the Mid-Year 1993 report along with the entry for the \$20,375.34 adjustment on Schedule H3 as noted.

-Your report discloses what appear to be in-kind contributions ("donations") from corporations on Schedule H4, supporting Line 21(a) of the Detailed Summary Page. Pursuant to Advisory Opinion 1992-33 (copy attached), the Commission concluded that a "national party committee may accept corporate in-kind donations in connection with administrative and fundraising activities" as long as "the Federal share of goods or services is paid or transferred to the non-federal account in advance" of the acceptance of the corporate in-kind donations by the Federal account.

Three steps were outlined by the opinion regarding the reporting of these in-kind donations: On Schedule H3, the "committee should first disclose a transfer (in-kind) from the non-federal account for the in-kind donation." Also reported on Schedule H3 should be the date the committee receives the in-kind donation, the full amount of the in-kind donation (transfer) and the particular administrative or fundraising event in which the in-kind donation was received. On Schedule H4, "the committee should make two separate entries, the first of which discloses the use or 'expenditure' of the in-kind donation, "and the second of which reflects advance or contemporaneous payment of" the Federal's share of the in-kind donation by the Federal account to the non-federal account. This payment should be made the same day the in-kind donation is transferred to the Federal account.

members of the Commission are required in order for the Commission to render an advisory opinion. 2 U.S.C. §§ 437(c)(1) and 437f, and only three Commissioners agreed with the General Counsel's draft, it appeared that no opinion would be issued.

Since five Commissioners agreed on the result, however, we, along with Commissioners Aikens and Elliott, believed that it was important for the Commission to try to issue an opinion on the significant question raised by the requestor. In order to attract the five votes, this meant that the supporting rationale upon which all five Commissioners could agree would be necessarily limited. Indeed, as the General Counsel explained in a memorandum accompanying the draft which was eventually approved by the Commission with additional deletions: "The second draft, Draft B, is an attempt to reach consensus among the Commissioners by excising much of the legal analysis presented in the agency documents. . . . The Office of General Counsel recommends Draft B which reaches the same result with a minimum amount of legal analysis and leaves each Commissioner's office free to write a concurring opinion." Agenda Document #93-28 (March 2, 1993) at 1 (emphasis added).

As our concurring statement herein makes clear, *supra* at 3-4, we believe that Advisory Opinion 1983-16 mandates the result reached in this opinion, as do the Commission's regulations. Obviously, we did not "abandon" Advisory Opinion 1983-16 in Advisory Opinion 1993-2. Nor are we "capricious" for relying on that opinion in MUR 3708. That Commissioners Aikens and Elliott would make these allegations, knowing full well the circumstances surrounding passage of Advisory Opinion 1993-2, is blatant misrepresentation. No doubt, they attempt to sow confusion in order to avoid the fact that they simply do not wish to follow a perfectly valid precedent.

For a six member body such as the Federal Election Commission, the spirit of compromise is especially important. We approached Advisory Opinion 1993-2, as we thought did Commissioners Aikens and Elliott, with that spirit in mind. By twisting our good faith efforts at compromise in this matter in order to create a totally baseless and unfounded argument in MUR 3708, Commissioners Aikens and Elliott have not advanced the spirit of compromise in future matters.

IV.

Consistent with the Commission's regulations, the 5-1 ruling in Advisory Opinion 1983-16, and our position concerning the Georgia election, we conclude that there is only one § 44(laid) limitation applicable to the election process in Texas.

Dated: May 28, 1993.

[16083] AO 1993-3: Reallocation of Federal and State Expenses

[A political committee that has had a tough time with the allocation rules may reallocate its expenditures between the federal and state categories. Answer to B. Holly Schadler of Perkins Cole, 607 14th Street, N.W., Washington, D.C. 20005-2011.]

This responds to your letters dated February 23, 1993, and December 31, 1992, on behalf of Democrats 2000 ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed transfer reflecting a retroactive reallocation of expenses between a non-Federal and a Federal account.

You state that Democrats 2000 is a political committee organized in 1988 to operate on the Federal and non-Federal level. It is registered as a non-connected committee. It has two full-time staff members and an annual budget of \$130,000.¹

You state that the Committee did not fully understand the requirements of the new allocation regulations when they took effect in 1991, and had difficulty in categorizing expenses as administrative or fundraising, or Federal or non-Federal. The Committee had difficulty finding professional assistance to set up an appropriate accounting system. In addition, you assert that the Committee's activities did not fit neatly into the categories set out in the regulations. For example, the Committee conducts issue forums featuring elected officials and distributes a newsletter on Committee issue programs and other events. You state that such activities do not directly support either Federal or non-Federal candidates and are neither clearly fundraising or administrative events, and, as a consequence, "implementation of its current procedures took considerable time to finalize."

The Committee has gone through three phases in its attempts to allocate. From January to June 1991, the Committee used several methods, "many of which were modifications of their previous systems." Some expenses were determined to be non-Federal because "they had no direct federal impact." Some late June 1991 expenses were allocated as Federal because some of the Committee's

¹ In 1992, the Committee disbursed \$141,182.

activities involved Federal elected officials, although none of the activities related to the election of a particular candidate.

From August 1991 to May 1992, the second phase, only nominal transfers were made from the non-Federal to the Federal account. You state that the amount of the transfers was considerably below the amount of the non-Federal share of allocable expenses.

During the period from January 1991 to May 1992, the Committee "understood" that it could spend funds out of the Federal account and make corrections from the non-Federal account later, but was not aware of the time limit on such corrections at 11 CFR 106.6(a)(2)(iii)(B). The Committee was also uncertain as to how to account and report for in-kind contributions.

At the end of May 1992, a law firm assisted the Committee in developing new procedures to "track" and allocate expenses more effectively. Currently, the committee lists each check written from the Federal account individually on an accounting sheet. After that, it lists a total for each category (administrative and separate fundraising activities) in an individual column followed by a Federal column and a non-Federal column for each category. Whenever the Committee makes a transfer from the non-Federal to the Federal account, the totals from the non-Federal columns are added to determine the amount to be transferred.

You state that, in the fall of 1992, the Committee decided to recalculate the allocations made during the period through May 1992 to determine how much it had overpaid from its Federal account. You state that the process was completed in late 1992 and took a long time to complete "because of other demands during the campaign and the minimal staff available to complete this review." It revealed that, if the newly-used method had been used for the period in question, the Committee's cash on-hand in its Federal account at the end of May 1992 would have been \$21,731.12, instead of \$1,355.78, a difference of \$20,375.34.

You note the caution exercised by the Committee in making greater than necessary payments originally from the Federal account. You request that the Commission permit Democrats 2000 to retroactively reallocate its fundraising and administrative expenses from January 1991 to May 1992 in accordance with the more recent calculations.

The allocation regulations promulgated on January 1, 1991, provide that a political committee, including a non-connected political committee,² which has separate Federal and non-Federal accounts, shall allocate their Federal and non-Federal expenses for certain purposes. 11 CFR 106.6(a). These purposes include: (1) administrative expenses not directly attributable to a clearly identified candidate including rent, utilities, office supplies, and salaries, and (2) the direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected through such program.

The regulations explicitly provide for the method of allocating administrative expenses and the direct fundraising costs. Administrative costs should be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year election cycle. An estimate of the ratio may be based upon a prior comparable cycle or a reasonable prediction of disbursements. Calculations of Federal expenditures should include only amounts contributed to or otherwise spent on behalf of specific Federal candidates, and calculations of total disbursements should include only disbursements for specific Federal and non-Federal candidates, and not overhead or other generic costs. 11 CFR 106.6(c)(1). The regulations also provide for adjusting the allocation ratio periodically to reconcile it with actual activity to date, and to make appropriate transfers. 11 CFR 106.6(c)(2).

Direct fundraising costs should be allocated on a funds received basis whereby a committee allocates its fundraising costs based on the ratio of funds received into its Federal account to its total receipts for each fundraising program or event. Estimates of the ratio for disbursements prior to the event should be based upon reasonable predictions and adjustments should be made after the event to correspond to the actual ratio of funds received. 11 CFR 106.6(d).

The allocation regulations have always allowed Federal accounts to pay all committee expenses, if desired. 11 CFR 106.6(a). Furthermore, these regulations have always provided a time window within which non-Federal accounts may transfer funds to the Federal accounts for the non-Federal share of joint expenditures.

In the original proposed rule the window was a brief 10 days after payment from the Federal account (no time before). The 40 day window contained in the final rules, effective January 1, 1991, was

² A non-connected committee includes any committee which conducts activity in connection with an election, but

which is not a party committee, an authorized committee, or a separate segregated fund. 11 CFR 106.6(e).

10 days longer than that advocated in any of the comments received in response to that proposed rule. Nevertheless, in an effort to be even more accommodating to committees, the window was expanded to 70 days (10 days before/60 days after the payment from the Federal account) in an amended rule that took effect on June 18, 1992. 11 CFR 106.6(e)(2)(iii)(B).³

The Committee's long-standing difficulties occurred despite the guidance and instructions set out in the new allocation regulations, published June 26, 1990, and other Commission publications such as the FEC Record Supplement on Allocation issued in November 1990. Nevertheless, the Commission, on three occasions, has permitted retroactive reallocation to remedy errors by political committees acting in good faith.

In Advisory Opinion 1991-15 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6019], issued in June 1991, the Commission permitted retroactive application by a state party committee of a ballot composition formula for administrative costs where the initial formula was based on a "good faith miscalculation" and had resulted in transfers of non-Federal funds to the Federal account in amounts that were lower than the permissible share of joint expenditures. The committee stated that it had not realized at first that certain special elections could be counted in the total of statewide offices. In Advisory Opinion 1992-2 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6045], issued in March 1992, the Commission permitted a national party committee to take a discrete group of expenses that had previously been allocated as administrative costs and retroactively reallocate them as direct costs of fundraising. This group of expenses consisted of salaries and fringe benefits of employees in the committee's Fundraising and Direct Mail divisions. In Advisory Opinion 1992-27 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6053], issued in August 1992, the Commission permitted a national party committee, which recognized its responsibilities under the rules but which did not have an adequate accounting and reporting system in place until March, 1992, to retroactively break down prior fundraising costs (from the beginning of 1991 through February 1992) into Federal and non-Federal shares and make the necessary transfer to the Federal account.

The Commission's decisions to permit retroactive reallocations and resultant non-Federal to Federal transfers were a recognition that "the allocation regulations represent significant revisions to past practice and require a brief period of adjustment, i.e., the current [1991-92] election cycle, by political committees acting in good faith." Advisory Opinion 1992-2. See Advisory Opinion 1992-27.⁴

Based on the circumstances presented, the Commission concludes that Democrats 2000 may retroactively reallocate its fundraising and administrative expenses for the period from January 1991 through May 1992. The Commission notes that this request was submitted on December 31, 1992, the last day of the 1991-1992 allocation cycle, and that the "brief period of adjustment" referenced in Advisory Opinion 1992-2 has now ended. Consistent with Advisory Opinions 1991-15, 1992-2, and 1992-27, the Committee may, within 30 days after the date of this opinion, transfer \$20,375.34 from its non-Federal to its Federal account.

From an examination of Democrats 2000's reports filed with the Commission, it appears that the joint expenditures from January 1991 through May 1992 have now been reported on Schedule H4's. The Committee should file with its mid-year 1993 report amended H2's and H4's listing each covered expenditure and the revised calculations. See Advisory Opinion 1991-15. If any allocable expenditures have been reported solely as expenditures itemized on Schedule B, the Committee should file Schedule H2's, H3's, and H4's for these expenditures, also at the time it files its mid-year 1993 report. See Advisory Opinion 1992-27. The Committee should include in its report an explanatory letter noting the reason for the new allocations and resulting transfers.

An entry for the adjustment should be made on Schedule H3 when the transfer is actually made. Democrats 2000 should note that this adjustment reflects retroactive reallocations during the period January 1, 1991, through May 31, 1992, made pursuant to Advisory Opinion 1993-3.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. § 437f.

³ Commission regulations also now provide for a 60-day period after a fundraising program or event for payment to the Federal account by the non-Federal account if the Federal account had paid more than its allocable share. 11 CFR 106.6(d)(2).

⁴ The Commission notes that the election cycle for allocation purposes differs from that found in 11 CFR 100.3(b), where the cycle is defined with respect to candidates and is considered as ending "on the date on which the general

election for the office or seat that the individual seeks is held." 11 CFR 100.3(b). As was made clear in Advisory Opinion 1991-6 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6013], the allocation rules envision a two year cycle which begins on January 1 of each odd-numbered year and extends through December 31 of the following even-numbered year. Advisory Opinions 1991-15 and 1991-6.